

Department of Veterans Affairs

§ 17.508

employee or otherwise, except in accordance with §17.508(c) or where otherwise legally required.

(b) Disclosure of confidential and privileged quality assurance records and documents to authorized individuals under either §17.508 or §17.509 shall bear the following statement: “These documents or records (or information contained herein) are confidential and privileged under the provisions of 38 U.S.C. 5705, which provide for fines up to \$20,000 for unauthorized disclosures thereof, and the implementing regulations. This material shall not be disclosed to anyone without authorization as provided for by that law or the regulations in §§17.500 through 17.511.”

(Authority: 38 U.S.C. 5705)

§ 17.505 Disclosure authorities.

The VA medical facility Director, Regional Director, Under Secretary for Health, or their designees are authorized to disclose any confidential and privileged quality assurance records or documents under their control to other agencies, organizations, or individuals where 38 U.S.C. 5705 or the regulations in §§17.500 through 17.511 expressly provide for disclosure.

(Authority: 38 U.S.C. 5705)

§ 17.506 Appeal of decision by Veterans Health Administration to deny disclosure.

When a request for records or documents subject to the regulations in §§17.500 through 17.511 is denied in whole or in part by the VA medical facility Director, Regional Director or Under Secretary for Health, the VA official denying the request in whole or in part will notify the requestor in writing of the right to appeal this decision to the General Counsel of the Department of Veterans Affairs within 60 days of the date of the denial letter. The final Department decision will be made by the General Counsel or the Deputy General Counsel.

(Authority: 38 U.S.C. 5705)

§ 17.507 Employee responsibilities.

(a) All VA employees and other individuals who have access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations

in §§17.500 through 17.511 will treat the findings, views, and actions relating to quality assurance in a confidential manner.

(b) All individuals who have had access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511 will not disclose such records or information therein to any person or organization after voluntary or involuntary termination of their relationship to the VA.

(Authority: 38 U.S.C. 5705)

§ 17.508 Access to quality assurance records and documents within the agency.

(a) Access to confidential and privileged quality assurance records and documents within the Department pursuant to this section is restricted to VA employees (including consultants and contractors of VA) who have a need for such information to perform their government duties or contractual responsibilities and who are authorized access by the VA medical facility Director, Regional Director, the Under Secretary for Health, or their designees or by the regulations in §§17.500 through 17.511.

(b) To foster continuous quality improvement, practitioners on VA rolls, whether paid or not, will have access to confidential and privileged quality assurance records and documents relating to evaluation of the care they provided.

(c) Any quality assurance record or document, whether confidential and privileged or not, may be provided to the General Counsel or any attorney within the Office of General Counsel, wherever located. These documents may also be provided to a Department of Justice (DOJ) attorney who is investigating a claim or potential claim against the VA or who is preparing for litigation involving the VA. If necessary, such a record or document may be removed from the VA medical facility to the site where the General Counsel or any attorney within the Office of General Counsel or the DOJ attorney is conducting an investigation or preparing for litigation.

(d) Any quality assurance record or document or the information contained

therein, whether confidential and privileged or not, will be provided to the Department of Veterans Affairs Office of Inspector General upon request. A written request is not required.

(e) To the extent practicable, documents accessed under paragraph (b) of this section will not include the identity of peer reviewers. Reasonable efforts will be made to edit documents so as to protect the identities of reviewers, but the inability to completely do so will not bar access under paragraph (b).

(f) No individual shall be permitted access to confidential and privileged quality assurance records and documents identified in § 17.501 unless such individual has been informed of the penalties for unauthorized disclosure. Any misuse of confidential and privileged quality assurance records or documents shall be reported to the appropriate VHA official, e.g., Service Chief, Medical Center Director.

(g) In general, confidential and privileged quality assurance records and documents will be maintained for a minimum of 3 years and may be held longer if needed for research studies or quality assurance or legal purposes.

(Authority: 38 U.S.C. 5705)

§ 17.509 Authorized disclosure: Non-Department of Veterans Affairs requests.

(a) Requests for confidential and privileged quality assurance records and documents from organizations or individuals outside VA must be made to the Department and must specify the nature and content of the information requested, to whom the information should be transmitted or disclosed, and the purpose listed in paragraphs (b) through (j) of this section for which the information requested will be used. In addition, the requestor will specify to the extent possible the beginning and final dates of the period for which disclosure or access is requested. The request must be in writing and signed by the requestor. Except as specified in paragraphs (b) and (c) of this section, these requests should be forwarded to the Director of the facility in possession of the records or documents for response. The procedures

outlined in 38 CFR 1.500 through 1.584 will be followed where applicable.

(b) Disclosure shall be made to Federal agencies upon their written request to permit VA's participation in healthcare programs including healthcare delivery, research, planning, and related activities with the requesting agencies. Any Federal agency may apply to the Under Secretary for Health for approval. If the VA decides to participate in the healthcare program with the requestor, the requesting agency will enter into an agreement with VA to ensure that the agency and its staff will ensure the confidentiality of any quality assurance records or documents shared with the agency.

(c) Qualified persons or organizations, including academic institutions, engaged in healthcare program activities shall, upon request to and approval by the Under Secretary for Health, Regional Director, medical facility Director, or their designees, have access to confidential and privileged medical quality assurance records and documents to permit VA participation in a healthcare activity with the requestor, provided that no records or documents are removed from the VA facility in possession of the records.

(d) When a request under paragraphs (b) or (c) of this section concerns access for research purposes, the request, together with the research plan or protocol, shall first be submitted to and approved by an appropriate VA medical facility Research and Development Committee and then approved by the Director of the VA medical facility. The VA medical facility staff together with the qualified person(s) conducting the research shall be responsible for the preservation of the anonymity of the patients, clients, and providers and shall not disseminate any records or documents which identify such individuals directly or indirectly without the individual's consent. This applies to the handling of data or information as well as reporting or publication of findings. These requirements are in addition to other applicable protections for the research.

(e) Individually identified patient medical record information which is